

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DENNIS MCKEITHAN,)	
)	
Plaintiff,)	
)	
v.)	
)	Civil Action No. 06-965
JEFFREY BEARD, SECRETARY OF)	Judge Lancaster
CORRECTIONS, <i>et al.</i> ,)	Magistrate Judge Caiazza
)	
Defendants.)	

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

I. RECOMMENDATION

For the reasons that follow, it is respectfully recommended that the Motion for Summary Judgment filed by Defendant Dr. Herbick (Doc. 94) be granted.

II. REPORT

Dennis McKeithan ("McKeithan" or "the Plaintiff") is a state prisoner currently incarcerated in the State Correctional Institution at Fayette ("SCI-Fayette"). The Court has granted a Motion to Dismiss with respect to all medical claims made against Defendant Dr. Herbick (Doc. 69) - except for the Plaintiff's claim that he has not received treatment for "a pulmonary disease", although a test resulted in a positive finding. (Doc. 1 at 37). Dr. Herbick now moves for summary judgment with respect to this last remaining claim (Doc. 94). In support of his Motion, Dr. Herbick has provided a declaration describing the

results of four electrocardiograms performed on the Plaintiff during his incarceration (Doc. 92, Ex. 1). In his declaration he states that "[e]ach of the electrocardiograms . . . showed a normal sinus rhythm but noted an abnormality because of a right axis deviation." Id. Dr. Herbick goes on to state that "[t]he deviation is minimal and not representative of any pulmonary condition or disease." Id.

A. Legal Standard

McKeithan's burden in response to a well-pleaded motion for summary judgment is to present "specific facts showing that there is a *genuine issue for trial* . . . or the factual record will be taken as presented by the moving party and judgment will be entered as a matter of law. Matsushita Elec. Ind. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (internal citation and quotation omitted, emphasis added).

B. The Analysis

The Court denied Dr. Herbick's Motion to Dismiss with respect to the allegations of an untreated pulmonary condition because it was required to rely solely upon the Plaintiff's allegations. Now, however, the evidence presented to the Court clearly shows that the Plaintiff does not suffer from a serious medical condition¹. Hence, the Motion for Summary Judgment should be granted.

1. See, Farmer v. Brennan, 511 U.S. 825, 834 (1994).

In accordance with the Magistrate's Act, 28 U.S.C. § 636 (b)(1)(B) and (C), and Rule 72.1.4 (B) of the Local Rules for Magistrates, objections to this Report and Recommendation are due by December 17, 2007.

November 30, 2007

s/Francis X. Caiazza
Francis X. Caiazza
United States Magistrate Judge

cc:

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